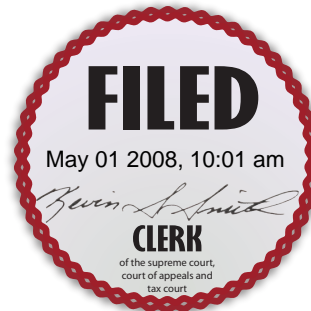


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**ROBERT K. COWLES**  
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**MONIKA PREKOPA TALBOT**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

FRANKIE A. JOHNSON,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 48A04-0710-CR-586

---

APPEAL FROM THE MADISON SUPERIOR COURT  
The Honorable Thomas Newman, Jr., Judge  
Cause No. 48D03-0602-FC-00055

---

**May 1, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Following his plea of guilty to Class D felony nonsupport of a dependent child, Frankie A. Johnson appeals his above-advisory sentence of three years. Specifically, Johnson argues that the trial court failed to give sufficient mitigating weight to his guilty plea and that his sentence is inappropriate. Because Johnson can not challenge the weight of his guilty plea and because he has failed to persuade us that his sentence is inappropriate, we affirm.

## **Facts and Procedural History**

On February 6, 2006, the State charged Johnson with Class C felony nonsupport of a dependent child. Approximately a year and a half later, on June 11, 2007, Johnson pled guilty to Class D felony nonsupport of a dependent child.<sup>1</sup> According to the plea agreement, Johnson's sentence was "open to the Court." Appellant's App. p. 9. According to the factual basis presented by the State,

[T]he defendant, Frankie A. Johnson[,] is the father of three (3) children, born to Sheila Clark that being [F.J.], date of birth 1/5/87; [S.J.], date of birth 2/21/88; and [W.J.], date of birth 9/13/89. There was an order of paternity on June 23rd of 1987 and support was entered in Madison Superior Court cause number 48D02-8705-JP-0182 by the defendant was ordered to pay support for [F.J.] in the amount of \$14.50 per week; and that on May 11th of '99 an order of paternity under cause number 48D02-9904-JP-073, was ordered to pay for [S.J.] and [W.J.] in the amount of \$100 per week. Those were consolidated for a total order of \$150 per week from January 1st, 1994 through June 30th of 2001. The defendant did knowingly fail to provide that support to the extent that as of August 13th 2001 he owed \$17,945 – I guess that should've been 2006, he owed over \$15,000 in his child support as of January 7th 2006.

Tr. p. 8.

---

<sup>1</sup> In this same plea agreement, Johnson pled guilty to three counts in another case, Cause No. 48D03-0601-FD-15. Johnson also appeals his sentence in that case. See *Johnson v. State*, 48A02-0710-CR-895 (Ind. Ct. App. May 1, 2008).

At the sentencing hearing, the trial court identified as aggravators Johnson's prior criminal history, which the court found to be "substantial" and consisting of similar types of offenses that were committed "year after year," *id.* at 43, the charges pending against Johnson in Hamilton County for offenses occurring in 2003, and the fact that after the child support case was filed, Johnson made no effort to pay child support to the clerk of the court, causing the arrearage to continue to grow. As for mitigating circumstances, the trial court identified Johnson's guilty plea and the fact that he was employed.<sup>2</sup> Finding that the aggravators outweighed the mitigators, the trial court sentenced Johnson to an above-advisory term of three years and ordered it to be served consecutive to his three-year sentence in Cause No. 48D03-0601-FD-15. Johnson now appeals his sentence.

### **Discussion and Decision**

Johnson raises two issues on appeal. First, he contends that the trial court failed to give sufficient mitigating weight to his guilty plea. Second, he contends that his sentence is inappropriate.

#### **I. Guilty Plea**

First, Johnson contends that the trial court erred by failing to give sufficient mitigating weight to his guilty plea. Although sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion, *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007), our Supreme Court clarified in *Anglemyer* that a trial court can not now be

---

<sup>2</sup> We note that the trial court's oral sentencing statement is more thorough than its written sentencing order. *Compare* Tr. p. 43-45 *with* Appellant's App. p. 12.

said to have abused its discretion in failing to properly weigh aggravators and mitigators. *Id.* at 491. Accordingly, Johnson’s challenge fails.<sup>3</sup>

## **II. Inappropriate Sentence**

Next, Johnson contends that his three-year sentence is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The burden is on the defendant to persuade us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offense, Johnson failed to provide for his three children as ordered by the court and continued to do so after the charge was filed in this case, accumulating nearly twenty thousand dollars in child support arrearage. As for the character of the offender, although Johnson did not include his PSI report in his appendix, the prosecutor stated at the sentencing hearing that according to his review of Johnson’s PSI, Johnson had thirteen convictions as an adult, five of which were for felonies, and eight juvenile adjudications. The trial court stated that Johnson’s criminal history was “substantial” and consisted of similar types of offenses that were committed “year after

---

<sup>3</sup> Johnson also contends that the trial court failed to consider as a mitigator that he was incarcerated from January 2006 to January 2007, but he has waived this argument for failing to present a cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a).

year” and “time after time.” Tr. p. 43. In addition, the trial court ordered the sentence in this case to be served consecutive to Johnson’s three-year sentence in Cause No. 48D03-0601-FD-15 for battery, resisting law enforcement, and residential entry, all Class D felonies. Finally, at the time of sentencing in this case, Johnson had charges pending against him in Hamilton County for offenses occurring in 2003. Although Johnson pled guilty and was employed at the time of sentencing, these factors are overshadowed by Johnson’s criminal ways. Johnson has failed to persuade us that his three-year sentence is inappropriate.

Affirmed.

MAY, J., and MATHIAS, J., concur.